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Report of the United Nations High Commissioner for Human Rights

Summary

The present report, submitted pursuant to General Assembly resolution 48/141, considers the human rights situation of older persons, including through an analysis of existing international instruments and gaps in the protection regime. Older persons represent a large and growing segment of the population and they face particular and urgent human rights challenges. As the present report argues, these challenges relate equally to civil, cultural, economic, political and social rights.

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I. Introduction

1. The present report is submitted to the Economic and Social Council pursuant to General Assembly resolution 48/141 of 20 December 1993. It offers an analysis of the human rights situation of older persons in the light of the indivisible, interdependent and interrelated nature of all human rights.

II. Background

2. Population ageing constitutes one of the most significant demographic transformations of the twenty-first century. For the first time in history, humankind will reach a point at which there are fewer children than older persons in the world. Globally, approximately 700 million people or 10 per cent of the world's population is already over the age of 60. By 2050, the global percentage will double, reaching 20 per cent or approximately 2 billion persons. Contrary to popular perception, all regions will be confronted by growing numbers, as follows:

(a) The fastest increase will take place in Africa which is projected to reach 215 million of persons aged 60 or older by 2050, an almost fourfold increase from current figures, doubling its proportion from 5 per cent of the total population in 2010 to 11 per cent in 2050;

(b) While the population of Western Asia remains young, the region is ageing fast. The population 60 or older is projected to more than quadruple in the next 40 years, to reach 69 million in 2050. The proportion of persons aged 60 and over is projected to increase to 19 per cent by 2050;

(c) The Asia-Pacific region is home to 59 per cent of the world's elderly population in 2010. It is estimated that the number of older persons in this region will triple in the next 40 years, from 414 million in 2010 to 1.25 billion by 2050. The proportion of people aged 60 and over in the total population will more than double between 2010 and 2050, from 10 per cent to 24 per cent;

(d) Similar trends are found in Latin America and the Caribbean where the proportion of persons aged 60 and over will more than double between 2010 and 2050, from 10 per cent to 25 per cent, reaching 188 million persons;

(e) Europe has the oldest population of all major regions in 2010 and is expected to reach 236 million by 2050. Europe will continue to have the oldest population in the world, with a proportion of older persons that is projected to increase to 34 per cent in 2050.[1]

3. These figures alone offer a compelling case in favour of dedicated attention to older persons. Their impact is magnified when examining the human rights situation of older men and women and the limited and fragmented response to their plight. Older persons' human rights are often invisible in national and international legislation and policymaking. Few States have incorporated this major demographic shift into their campaigns against discrimination and violence or in their programmes to ensure adequate access to services and facilities, to name a few areas. The human rights situation of older persons is rarely echoed at the international level despite broad consensus on their high vulnerability to

[1] See report of the Secretary-General, Second review and appraisal of the Madrid International Plan of Action on Ageing, 2002, E/CN.5/2012/5.

neglect, isolation and abuse. Only a handful of international human rights mechanisms have devoted attention to older persons over the years or developed the guidance and specific tools to provide to Governments and other stakeholders that such a large population group would entail. More worryingly, older men and women have been listed as a group that faces human rights violations and requires clearly defined protection, yet effective remedies and guarantees are rare.

4. It is only recently that the international community has begun to address older persons from a human rights perspective. In December 2010, the General Assembly established an Open-ended Working Group on Ageing for the purpose of strengthening the human rights protection of older persons. This is the first-ever international forum with such a focus. Its mandate is to consider the existing international framework, its gaps and ways to address those, including, as appropriate, the consideration of further instruments and measures (General Assembly resolution 65/182). During its two substantive sessions in 2011, the working group has brought an interregional dimension to the issues, offering opportunities for cross-fertilization. It has identified four kinds of gaps in the international protection system: normative, information, monitoring and implementation gaps.[2]

5. Similarly, some regional responses to the issue have emerged. The African Commission on Human and People's Rights, through its Working Group on Older persons and People with Disabilities in Africa, has made considerable progress in the drafting of a Protocol to the African Charter to be considered in 2012.[3] The Organization of American States is currently preparing a draft convention on the human rights of older persons aimed for negotiations in 2012–2013.[4] The Council of Europe has started to draft a non-binding instrument on the promotion of the human rights of the elderly as mandated by its Steering Committee for Human Rights, which is also expected in the coming years.[5]

6. In 2011, the Secretary-General's report on follow-up to the Second World Assembly on Ageing (A/66/173) focused for the first time entirely on the current human rights situation of older persons. The report emphasized four major areas of concern: poverty and inadequate living conditions; age-related discrimination; violence and abuse; and lack of special measures, mechanisms and services.

7. Among his various concerns, the Secretary-General underlined poverty and inadequate living conditions, namely homelessness, malnutrition, unattended chronic diseases, lack of access to safe drinking water and sanitation, unaffordable medicines and treatments and income insecurity, as the single most pressing human rights challenge for older men and older women. The report noted the recognition by member States of the relatively lower standard of living among older persons as compared to other population groups, including gaps between men and women, urban and rural populations and, in suburban and slum areas.

8. For human rights purposes, age is not a merely a numerical designation, but rather, age is a social construct based on custom, practice and the perception of the role a person plays in his or her community. In the face of the dramatic increase of life expectancy societies have yet to readjust their understanding of the important contribution individuals make as they grow older. The quality of life and the societal role of a person aged 60, 70 or 80 years may differ substantially from the representations underlying various legal and

[2] For information, see http://social.un.org/ageing-working-group/.

[3] See resolution of the African Commission ACHPR/Res143 (XXXXV)09, May 2010.

[4] See resolution of the General Assembly of the Organization of American States, AG/RES. 2654 (XLI-O/11).

[5] See Council of Europe, Steering Committee for Human Rights, document CDDH(2011)R73, para. 26 (i).

social notions such as mandatory retirement age, age limitations to access productive resources or insurances, or legal capacity to exercise one's rights. In this context, age alone cannot be used as a proxy for illness, risk or dependency anymore.

9. The complexity of a definition of older persons is partially due to these factors. Old-age-specific vulnerabilities and fragility can be the result of physical and mental conditions, or impairments resulting from ageing, but just as likely they can result from the obstacles encountered due to societal perception and the interaction of an individual with his or her environment. Numerous factors such as family context and the set of mechanisms available or denied to an individual in areas as varied as diagnosis and treatment of chronic diseases, home care, information and participation, and gender or socio-economic conditions often play a critical role in the unique experiences each individual faces. Nowadays, a life with dignity in old age may well be more determined by the measures and policies in place to ensure individuals the exercise and enjoyment of all human rights than by their chronologic age. The international community faces an enormous deficit in defining and setting in place these mechanisms to respond to newer and more nuanced notions of ageing, dignity and inclusion, while also recognizing the need for stronger protection against vulnerabilities and discrimination. Data disaggregated by segments of the population over 60 years of age and multidisciplinary analysis capturing the diversity of issues older people encounter are sorely lacking.

III. Existing international instruments

10. Ageing has been on the international agenda for over thirty years. Since the adoption of the 1982 Vienna International Plan of Action on Aging, there has been consensus about the need to develop a response to the changing demography. Its focus has been on the developmental aspects of ageing, although a general statement of commitment to human rights reaffirmed that the "fundamental and inalienable rights enshrined in the Universal Declaration of Human Rights apply fully and undiminished to the ageing". Some declaratory instruments, including the United Nations Principles for Older Persons adopted in 1991 and the Madrid International Plan of Action of Ageing adopted in 2002 also committed to the elimination of age-based discrimination and the promotion of the human rights of older persons.

11. After 10 years of its adoption, the non-binding Madrid International Plan of Action on Ageing remains the only international instrument devoted to older persons. The Madrid International Plan of Action on Ageing prioritizes the social sector, notably health, and enabling and supportive environments for older persons. While the positive impact of the Madrid Plan during this decade is undeniable, this instrument does not provide a comprehensive human rights framework for older persons. Important human rights issues, for instance equality before the law and non- discrimination, access to effective remedies, or freedom from torture or other cruel, inhuman or degrading treatment or punishment, are not provided for. The implementation of the Plan of Action does not systematically consider linkages to the obligations of State parties under international human rights instruments. Furthermore, the instrument does not provide for independent monitoring and accountability mechanisms to assess fully the progress on its implementation.

12. There is no binding international human rights instrument devoted to older persons. Also, explicit references to age as a ground of discrimination are rare in existing treaties.[6]

[6] The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families includes "age" in article 7, under grounds for discrimination. The Convention on the Rights of Persons with Disabilities includes

In some cases, treaty monitoring bodies have been compelled to use the open-ended category ("other status") for the consideration of old age-related issues. International human rights bodies have not produced a systematic body of work on older persons over the years. Some treaty monitoring mechanisms have addressed situations affecting older persons, specifically based on the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and more recently the Convention on the Elimination of All forms of Discrimination against Women.

13. Two general comments by treaty monitoring mechanisms have shed light on the application of human rights treaties to core issues for older persons. Firstly, in 1995 general comment No. 6 (1995) of the Committee on Economic, Social and Cultural Rights on the economic, social and cultural rights of older persons offered a detailed interpretation of the specific obligations of State parties to the International Covenant on Economic, Social and Cultural Rights regarding older persons. Although adopted in 1995, it continues to offer the most comprehensive guidance on older persons on rights such as the right to health, an adequate standard of living including food and housing, to work and to social security.

14. Secondly, the Committee on the Elimination of Discrimination against Women adopted general recommendation No. 27 (2010) on older women and protection of their rights in 2010. The Committee acknowledged the gendered nature of ageing and the disproportionate impact of discrimination on older women. The recommendation calls for substantive efforts to mainstream older women as a policy priority; to set in place special temporary measures to ensure participation in all areas of life; to strengthen legal instruments for the protection of older women's rights under the Convention; to repeal laws, regulations and customs that infringe on their rights; and the collection, analysis and dissemination of relevant data

15. Similarly, two special procedure mandate holders have considered the situation of older persons by devoting thematic studies exclusively to their situation, namely the independent expert on the question of human rights and extreme poverty in 2010 (A/HRC/14/31) and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health in 2011 (A/HRC/18/37).

16. The newest human rights mechanism, the universal periodic review, has recently completed its first cycle of review for all States. Not surprisingly, when compared with other population segments, older persons' issues were rarely addressed by Member States. Where they were mentioned, older persons were listed among various vulnerable groups. The scarce attention to older persons in the first round confirms trends already apparent in other mechanisms. Nonetheless, a few recommendations relating to older persons hinted at matters requiring in-depth attention, like the need to provide precise statistics on extrajudicial killings of elderly women based on accusations of witchcraft; calls to ensure that economic measures, including retrogressive measures, do not disproportionately affect the elderly; the need to adopt legislation to ensure health and social support services for older persons; and measures to protect elderly asylum seekers.[7]

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references to older persons in article 25 (b) on health, article 28, paragraph 2 (b), on an adequate standard of living and social protection, article 13 on access to justice and article 16 on age-sensitive measures of protection. The Convention on the Elimination of All Forms of Discrimination against Women includes a reference to old age in relation to discrimination in the enjoyment of the right to social security in article 11, paragraph 1 (e).

[7] See for example Working Group of the Universal Periodic Review reports on the United Republic of Tanzania (A/HRC/19/4, paras. 85.29, 85.42), Ireland

IV. Gaps in the international protection regime

17. The principles of universality and non-discrimination enshrined in article 1 of the Universal Declaration of Human Rights, which states that "all human beings are born free and equal in dignity and rights", are cornerstones of international human rights law. The reality of old age is ushering in a new era for these principles, where persons aged 60, 70 or 80 are raising their voice to note that people age, but their rights remain the same for as long as they are alive. Older persons frame their demands along the principles of equality, respect, autonomy and dignity. Regrettably, evidence points in the opposite direction: neglect of older persons, mounting human rights issues inadequately addressed by national and international bodies and the absence of a dedicated focus. The following sections take stock of some main areas where protection gaps relevant to older persons are identified.

A. Age discrimination

18. "Ageism", or the discrimination against and stigmatization of individuals as they grow older, is widespread. Sometimes ageism is expressed in the form of recurring stereotypes and negative attitudes and practices; other times it is incorporated in laws and policies, such as in relation to recruitment or legal capacity to exercise their rights. Often it is at the root of isolation and exclusion of older persons, who are considered unproductive and therefore irrelevant. It is also intimately related to violence and abuse in public and private spheres. Furthermore, it is often exacerbated by other grounds for discrimination. Sex, disability, health or socioeconomic condition, place of residence, marital status and ethnic or religious backgrounds, to name a few, are often combined to the detriment of older persons.

19. Age-based discrimination has not been explicitly defined in human rights treaties. As noted, references to age are scarce in any of the principal international human rights treaties with the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of Persons with Disabilities and the Convention on the Elimination of All Forms of Discrimination against Women. However, international human rights law defines discrimination as any distinction, exclusion or restriction which has the purpose or the effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of the human rights and fundamental freedoms in any field.[8]

20. The discussion about age discrimination inevitably leads to the question of age ceilings for the exercise of certain rights, such as the right to work in some jobs. It is generally accepted that restrictions to human rights can only be justified if they are objective and proportionate. Thus, general exclusions based on age cannot be accepted unless there is a clear connection between an age-related limitation and the nature of the tasks to be performed.

(A/HRC/19/9, para. 106.35), Trinidad and Tobago (A/HRC/19/7, para. 87.28) and Belgium (A/HRC/18/3, para. 100.51).

[8] See for example the Convention on the Elimination of All Forms of Discrimination against Women, article 1, or the Convention on the Rights of Persons with Disabilities, article 2.

B. Legal capacity and equal recognition before the law

21. Guardianship and substitute decision-making have traditionally been considered a relatively straightforward question when a person grows older. However, the paradigm shift towards supported decision-making provided for by article 12 of the Convention on the Rights of Persons with Disabilities places autonomy and independence of the individual at the centre of this notion. The debate leading to this provision and its subsequent application for persons with disabilities can guide the consideration of equality before the law for older persons and must be extended and further elaborated vis-à-vis their particular circumstances.

22. Growing old may mean more dependency on others and may involve new forms of accessing information and guidance. However, many older persons' testimonies repeatedly note that they are treated as incompetent and without due consideration to decades of independent work, productive lives and autonomy. Recurrently, they point to degrading attitudes by caregivers, civil servants or relatives in which they are "treated like children" purely because they cannot walk, talk or react as quickly. Measures should be adopted to ensure support for older persons in exercising their legal capacity, including effective safeguards to prevent abuse. Older persons must be provided with guarantees to ensure their preferences and best interests are taken into consideration in all matters relevant to their life, treatment, residence, assets, relationships, self-determination, end-of-life support or any other case. Similarly, conflicts of interest and undue influence should be regulated, especially in reference to family members and caregivers. Tailored responses include the consideration of the specific circumstances of each individual and require regular review by a competent, independent and impartial authority or judicial body. Safeguards must be proportional to the degree of impact to the persons' rights or interests.

C. Long-term care

23. A number of vital human rights considerations come to the fore in relation to long-term care, whether institutional or home-based. Particular challenges for the realization by older persons of the right to liberty and security of person, the right to privacy, freedom of movement, freedom of expression, freedom from torture and other cruel, inhuman and degrading treatment, the right to personal integrity, the right to an adequate standard of living and the right to the highest attainable standard of physical and mental health, among others, are common but have often not been adequately regulated.

24. Interventions in this area have traditionally been anchored in a combination of welfare, social security and health systems and are highly reliant on volunteers, relatives or less accountable charity and private-sector responses. Responsibilities may at times be diluted between government sectors at national and local levels, as long-term care appears frequently decentralized. Despite efforts to create or renew existing institutions or offer a combination of approaches to respond to the increasing demands, data points to a lack of care institutions, adequate monitoring procedures and trained staff, including social workers, nurses, geriatrics and health professionals, as well as inadequate conditions of service.

1. Institutional care

25. At times, institutionalization can be the voluntary decision of a person as he or she grows older. It can respond to a choice made autonomously, with effective access to all relevant information, due consent and without unlawful pressure. Ideally, the person retains her right to change this decision and make alternative arrangements at any time. However, care for older persons can more often take the form of forced institutionalization and

compulsory placements, in particular when no other forms of care are available for the individual or when relatives are unable or unwilling to provide care.

26. Care facilities specialized in older persons commonly take the form either of residential or nursing homes. Risk factors for abuse and violence in care settings may relate to institutional aspects, such as poorly trained staff and tolerance for aggression towards patients, or be specific to the care recipient, for example their gender, physical, mental or cognitive disability or impairment and aggressive or challenging behaviour towards carers. Systematic monitoring of these institutions and clear standards and criteria for their functioning, reporting and hiring policy has too long been off the radar of most national and international human rights monitoring mechanisms.

27. Older persons in institutions may be subjected to intimidation, aggression, inappropriate behaviour control methods, negligence or a failure to provide the appropriate or necessary care, among other forms of ill-treatment

28. Older persons with disabilities deserve specific mention as they are subject to hospitalization and institutionalization on the account of their age, their disability or both factors. Once admitted, the vast majority of older persons with disabilities spend the remaining part of their lives in institutions.[9] The Committee on the Rights of Persons with Disabilities has taken note of trends towards resorting to urgent measures of institutionalization which contain only ex post facto safeguards for the affected individuals (CRPD/C/ESP/CO/1, para. 35). The Committee has recommended the revision of laws that allow for the deprivation of liberty on the basis of disability, called for the repeal of provisions that authorize involuntary internment linked to an apparent or diagnosed disability and recommended adopting measures to ensure that health-care services, including all mental-health-care services, are based on the informed consent of the person concerned. Similar measures should be considered and further developed to cover the full spectrum of older persons in institutional care.

2. Home–based care

29. International provisions recognizing the right to an adequate standard of living identify some factors that are essential to the enjoyment of such standard of living.[10] Article 25, paragraph 1, of the Universal Declaration of Human Rights refers to "food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control". Article 11, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights mentions "adequate food, clothing and housing" and "the continuous improvement of living conditions". The Committee on Economic, Social and Cultural Rights has underscored that this list is not exhaustive and also encompasses a right to water, as access to safe drinking water is essential to enjoying an adequate standard of living.[11] Reference to the "continuous improvement of living conditions" allows for an inquiry into those factors that are crucial to achieving this progressive goal.

30. Such inquiry must take into account the specific circumstances faced by older persons, like article 28 of the Convention of the Rights of Persons with Disabilities did for persons with disabilities. Besides those factors deemed universal – for example, food and

[9] See interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/63/175.

[10] See also the Convention on the Rights of Persons with Disabilities, article 28.

[11] See Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water.

housing – there are needs and issues that are particularly relevant for an adequate standard of living of older persons. The reference to the "necessary social services" in the Universal Declaration of Human Rights also warrants a contextual approach to the uniqueness of older persons, as has been adopted for other segments of the population.

31. Home-based care is one area that has neither been sufficiently covered by human rights instruments nor paid enough attention by human rights bodies. It encompasses a variety of support services for older people who have difficulty caring for themselves for long periods of time, especially in relation to their health, personal or emotional needs. It might include, for example, support in activities of daily living like feeding, dressing, walking, bathing, using the bathroom, taking medication, shopping and coping with household tasks. Reference to some of these needs has been made by the Committee on Economic, Social and Cultural Rights in general comment No. 6, but mostly in connection with the right to adequate housing and the right to health, while other aspects of long-term care that are connected to personal aspects of daily life have yet not been sufficiently covered by the work of human rights bodies.

D. Violence and abuse

32. The Toronto Declaration on the Global Prevention of Elder Abuse defines elder abuse as "a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person". The abuse of older persons may be physical, psychological, sexual and emotional. Much like discrimination, elder abuse is often a hidden phenomenon. In addition, the general insufficiency of reliable statistics and information complicates the task of assessing the extent of the problem and offering effective remedies.

33. One of the most serious complaints regarding the treatment of older persons in care is that of physical violence. The consequences of physical violence for older persons can be serious and they are more likely to require longer periods of recuperation even from minor injuries. Apart from causing severe and lasting emotional distress, physical violence is also a cause of premature mortality among older persons. Its consequences also seriously affect mental health and may lead to depression, fear and anxiety reactions and post-traumatic stress. The Special Rapporteur on the right to health has stressed the negative impact that institutionalized care can have on dignity and autonomy of older persons and expressed concern at the incidence of unreported violence against older persons in care settings.[12]

34. Older persons also face financial exploitation, a form of abuse which can take various forms such as threats to their property, income or goods, including fraud, arbitrary deprivation of their property, theft, expropriation of land, property or goods, and fraudulent loss of the enjoyment and exercise of their legal capacity, with the purpose of taking control of their financial affairs.

[12] A number of reports in recent years have called attention to this phenomenon. See, for example, Dinesh Sethi et al. (eds.), "European report on preventing elder maltreatment" (World Health Organization, Copenhagen, 2011), p. 30.

E. Access to productive resources, work, food and housing in old age

35. Ageing has dramatic consequences in the context of work and access to productive resources. While the right to work[13] is essential for the realization of other human rights and an inherent part of human dignity, many societies devalue older workers as unproductive, slower, more prone to disease, unfit to learn and a burden to highly technological work environments. Access to loans, insurance, land or rent may be denied on the grounds of age or offered with unaffordable or unfair conditions as compared to other population groups, reducing the opportunities to engage in new or to continue productive activities. Older persons are often faced with poverty, including extreme poverty, as a consequence.

36. Recruitment processes sometimes discourage persons in their 40s and 50s from applying, to join training or retraining processes or to change careers. In many cases, losing a job a few years before retirement age leads to fewer opportunities, unfair work conditions or contracts and diminished salaries with dramatic implications for pensions, savings and quality of life in the long-term. In some countries, older males cannot access social safety net because they are considered fit to work. As a result they frequently find themselves in a difficult position where they are too old to find steady employment, but too young to be eligible for a pension.

37. The right to work implies the right not to be unfairly deprived of work. Direct and indirect discrimination in employment is pervasive despite some efforts at national and regional levels to enact explicit legislation to make this form of discrimination unlawful. Some age limitations established decades ago, which may not take into consideration criteria such as the life expectancy, health condition and the specific capacities, skills and knowledge of an individual, deserve closer examination and a more contextualized and updated set of criteria for application.

38. Over the years, the International Labour Organization has developed a number of recommendations addressing the situation of older workers and calling on members to take measures to prevent discrimination in employment and occupation. Essentially it has aimed at underlining that older workers should enjoy equality of opportunity and treatment in relation to all aspects of work and conditions of employment in all sectors. The recommendation contains important provisions relating to benefits for older workers who are unemployed for a period prior to qualifying for an old-age benefit should continue to receive an unemployment benefit, where such a scheme exists, until the date when the old-age benefit falls due. On the same vein, the International Labour Organization's Termination of Employment Recommendation No. 166 (1982) states that, subject to national law and practice regarding retirement, age should not constitute a valid reason for termination of employment.[14]

39. As far as older women are concerned, the Committee on the Elimination of Discrimination against Women notes that employers often regard older women as non-profitable investments for education and vocational training, including on information technology. As a general rule, there are fewer women in the formal employment sector and they tend to receive less remuneration for work of equal value. The Committee on the

[13] Art. 23 of the Universal Declaration of Human Rights, art. 6 of the International Covenant on Economic, Social and Cultural Rights, art. 5 (e) (i) of International Convention on the Elimination of Racial Discrimination and art. 11, para. 1 (a)–(d) of Convention on the Elimination of All Forms of Discrimination against Women.

[14] See also for example Invalidity, Old-Age and Survivor's Benefits Recommendation No. 131 (1967); Older Workers Recommendation No. 162 (1980).

Elimination of Discrimination against Women further underscores that gender-based discrimination in employment throughout life has a cumulative impact in old age, forcing older women to face disproportionately lower incomes and pensions, or even no pension, compared with men.

40. The right to adequate food is understood as the right to have, alone or in community with others, physical and economic access at all times to adequate food or means for its procurement.[15] The United Nations human rights bodies have not provided in-depth analysis of the many factors unique to older persons that undermine their enjoyment of the right to food or contribute to addressing the deprivation of older persons. On a few occasions, older persons are merely listed among other groups at risk of experiencing food insecurity.[16]

41. Many older persons are capable of maintaining food security for themselves and those in their care through production or procurement of food by their own means. However, older persons may face higher risk of losing access to resources, for example, as a result of discrimination, or as policies or practices place age limitations on work, property, rent or tenure of land. Examples include the situation of older widows, who in some cases may not control access to agricultural land, who may receive lower daily rates for hired labour and who may be more limited in their ability to access both formal and informal loans to cover basic living costs. Increased demands for older persons to care for their family, including children, e.g. as a result of HIV/AIDS pandemic, may also place a heavier burden on resources available to older persons to obtain food security for themselves and their family. When food is scarce, older persons tend to compromise their own access in favour of other family members.

42. Older persons may require support for procuring, accessing and preparing food adequate for their nutrition. States may fail to safeguard their right to food when laws, public policies and programmes fail to take into consideration older persons, such as when pension schemes are not indexed to match the increase of food and fuel prices. With decreased mobility or concerns for personal security, older persons may not be able to go long distance to buy provisions or carry them, or may not be able to cook food. In some of the most dramatic situations, such as when the elderly suffer from dementia, Alzheimer's or Parkinson's disease, they may forget or be unable to feed themselves.

43. Increasingly, the world is facing emergency situations and older people remain one of the most seriously affected groups. Lack of reliable data on age distribution and insufficient consultation complicate disaster-risk-reduction measures and contingency and relief plans. Housebound older persons are especially likely to be missed out at the rapid assessment stage. Furthermore, older persons cannot access aid delivered through long queues, necessitating long travel, or requiring hard labour through food-for-work programmes. When food rations are made up of difficult-to-digest or not-easy-to-cook foods, older persons may face malnourishment.

44. Many individuals approach mandatory retirement ages without access to a pension or with pensions lower than the real cost of living, therefore experiencing their old age with acute concerns about poverty and lack of income security. Equally worrisome are the economic risks faced by older persons who may be living with sufficient financial resources but face threats to their property or income, including consumer fraud, arbitrary deprivation

[15] Committee on Economic, Social and Cultural Rights, general comment No. 12 (1999) on the right to adequate food, para. 6.

[16] See for example, Committee on Economic, Social and Cultural Rights, concluding observations for Mongolia, E/C.12/1/ADD.47; Democratic People's Republic of Korea, E/C.12/1/ADD.95; and Israel, E/C.12/ISR/CO/3.

of their property, theft and the fraudulent interference with their legal capacity to manage their financial affairs.

45. Parallel concerns derive from an analysis of different elements of the right to adequate housing. Legal security of tenure and protection against forced eviction are a worldwide concern for older persons. They are usually more likely to be subject to evictions than other population groups. In several national laws, older women face obstacles to inheriting housing, land and property. In other regions, long-term older residents may be harassed by landowners or real estate agents to force them to evacuate their housing so that it can be redeveloped or sold at a higher price.[17] The physical and psychological impact of forced eviction on older persons is enormous.

46. While people experiencing homelessness include many older men and women, States are generally reluctant to research the phenomenon and develop systematic statistics that would serve as a basis to adopt and evaluate programmes addressing the issue. Affordability of housing is a particular concern for older persons, particularly in countries where tenant protection is weak. Disputes over ownership of land, non-recognition of land tenure and informality of settlements affect also the rights to water and sanitation and to health.

47. Architectural barriers can greatly affect older persons. For instance, older persons may be unable to leave their apartments for long periods in buildings lacking functioning elevators. This phenomenon, described as "prison flats", may isolate older persons, and may also pose important obstacles to basic activities of daily life, like buying food or attending medical treatment. The systematic inclusion of specific accessibility criteria and the universal design in housing and building codes, and city planning, would serve various parts of the population, including older persons, to enjoy adequate housing. In this context, the participation of older persons and their associations in decision-making processes is crucial.

F. Social protection and the right to social security

48. Motivated by findings that 80 per cent of the world's population – many of them older persons – lacks access to any kind of social security,[18] led by the International Labour Organization, a number of United Nations organizations developed a framework for policy design known as the social protection floor, anchored in the right of everyone to social security and the right to a standard of living adequate for the health and well-being of themselves and their families.[19] In the face of widespread inequality and poverty, the initiative suggests the adoption of a set of policies aimed at integrating key social areas with access to essential services at all ages. The social protection floor attempts to guarantee basic income security by means of basic old-age and disability pensions and universal access to essential health services, defined according to national priorities. The policy calls

[17] See, for instance, report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Mission to Spain, A/HRC/7/16/Add.2, paras. 50–56.

[18] See International Labour Organization, *Setting Social Security Standards in a Global Society. An analysis of present state and proactive and of future options for global social security standard setting in the International Labour Organization* (Geneva 2008).

[19] See International Labour Organization, *Social Protection Floor for a Fair and Inclusive Globalization: Report of the Advisory Group* (Geneva, 2011).

for a guaranteeing every individual a minimum income level and access to basic social services.

49. Article 9 of the International Covenant on Economic, Social and Cultural Rights protects the right of everyone to social security, including social insurance. The right is also recognized in article 22 of the Universal Declaration of Human Rights. Although it is a self-standing right, the right to social security is also critical to the realisation of the right to an adequate standard of living, guaranteed in article 11 of the Covenant.

50. The normative content of the right to social security was considered by the Committee on Economic, Social and Cultural Rights in its general comment No. 19 (2008) on the right to social security. Accordingly, the full implementation of the right requires that a system be available to ensure that benefits are provided for several contingencies relevant for older persons like old-age benefits, survivors' benefits, disability benefits and health benefits. Benefits payable under a social security system should be adequate in both amount and duration and accessible to all without discrimination. The Committee has also underscored that the right to social security includes both contributory and non-contributory benefits, and both cash and in-kind benefits.

51. In 2010, the Special Rapporteur on the question of human rights and extreme poverty devoted a thematic report to social protection of older persons. The Special Rapporteur noted that social protection comprises both social insurance and social assistance with due consideration to the true cost of living. She noted the coverage gap most severely affects those living in extreme poverty, a group in which older persons are represented to an unduly high degree. Furthermore, contributory systems of social security accentuate gender inequalities, with older women more likely to receive lower pensions and other contributory benefits. As the Special Rapporteur noted, the absence of adequate legal frameworks to underpin non-contributory social security schemes seriously threatens the beneficiaries' enjoyment of their human rights.

G. Right to health and end-of-life care

52. Age-based discrimination in the health system is a matter of great concern. Some medicines, exams and treatments are offered or denied on the sole grounds of an individual's age. Lack of trained staff, overcrowding, unaffordable services and treatment, lack of focus or priority granted to chronic diseases and shortage of medications are only a few of the structural issues that deter older persons from approaching health centres in a timely manner. Alone or combined, these factors lead to older persons approaching health care at advanced stages of illness or not approaching it at all.

53. In the context of health and end-of-life care, dignity and respect for all human rights is key for the well-being of older persons. Even where actions in this regard are regulated by national laws, institutional rules and protocols related to access to some medicines may result in deplorable forms of elder abuse or affect people who may be totally dependent on others and suffering great pain. Guidance to ensure alleviation or prevention of undue pain (such as bedsores) and provision of emotional support to the dying person and his or her family and loved ones is essential.[20]

54. Older persons may face life-limiting health conditions, often over extended periods of time. They are confronted with profound psychosocial and spiritual questions as they

[20] See EUSTaCEA project, under Daphne III programme, *European Charter of rights and responsibilities of older people in need of long-term care and assistance: Accompanying Guide* (2010).

face illness or death and physical pain – albeit preventable – is common. Gaps in access to palliative care represent one of the most terrifyingly common threats to the human rights and dignity of older persons. According to this concept, a life-limiting health condition is chronic, limits or has the potential of limiting the person's ability to lead a normal life and includes, among others, cancer, HIV/AIDS, dementia, heart, renal and liver disease and permanent serious injury. Unlike curative health care, its purpose is not to cure a patient or extend his or her life; rather, it is to offer relief from pain. Moderate to severe pain has a profound impact on quality of life. Studies have found that people who live with chronic pain are four times more likely to suffer from depression or anxiety. Existing medical treatments, including opioid pain relievers, are relatively inexpensive but frequently inaccessible due to obstructions to accessing these kinds of medicines or the insensitivity of caretakers or medical personnel.[21]

55. International human rights law offers a broad formulation of the right to the enjoyment of the highest attainable standard of physical and mental health in article 12 of the International Covenant on Economic, Social and Cultural Rights.[22] Accordingly, in its general comment No. 14 (2000) on the right to the highest attainable standard of health, the Committee on Economic, Social and Cultural Rights reaffirms the importance of an integrated approach, combining elements of preventive, curative and rehabilitative health treatment and also encourages attention and care for chronically and terminally ill persons, sparing them avoidable pain and enabling them to die with dignity.

56. In 2011, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health prepared a thematic study on the right to health of older persons (A/HRC/18/37). In this study, the Special Rapporteur called attention to several specific concerns, including the lack of adequate prevention and management of chronic illnesses and disability among older persons. He noted that access to primary health-care services is hindered by both physical and financial obstacles, including inadequate, unavailable or overly expensive transportation, limited physical mobility and poverty. Where health-care services are accessible, they may not be suitable for the particular needs of older persons or may not include specialists in geriatric medicine. Overall, age-based discrimination is cited as a significant barrier to accessing health care that compromises meaningful communication between patients and medical personnel, with consequences for the accuracy of diagnosis and quality of treatment.

57. Older persons are frequently denied sufficient information, time and opportunity to provide their free, prior, informed consent in the choice of treatment, services and care. In spite of having made specific demands about end-of-life treatment and care, sometimes years before and in writing, these decisions may at times be disregarded. The Special Rapporteur alludes to the crucial role of health-care providers in ensuring consent and the lack of training for health-care personnel involved in communicating information to older persons.

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[21] See for example, Human Rights Watch, *Unbearable Pain: India's obligation to ensure palliative care* (2009); *Uncontrolled Pain: Ukraine's Obligation to Ensure Evidence-Based Palliative Care* (2011).

[22] The right to health has been provided for in most of the core human rights treaties, including the Universal Declaration of Human Rights, the Convention on the Rights of Persons with Disabilities, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, which includes an age-based limit.

H. Old age and disabilities

58. While ageing cannot be equated to a disability in and of itself, old age can lead to disabilities. Some diseases directly related to old age, such as Alzheimer's or Parkinson's disease, are leading causes of disability among older persons. The *World Report on Disability 2011* confirms the relationship between old age and disability across all regions.[23] Old age and disability are factors that, separated or combined, can make a person vulnerable to a range of human rights violations – from violation of freedom of movement due to physical barriers to medical treatment without the person's free and informed consent.

59. Older persons with disabilities can often find themselves in a situation of powerlessness and vulnerability, in which they may be under the total control of another person, in nursing homes or other institutions or when they are under the exclusive control of their caregivers or legal guardians. In a given context, the particular disability of an individual may render the person dependant and an easier target of abuse (see A/63/175).

I. Older persons in prison and access to justice

60. The growing population of older persons in prisons poses a new set of challenges, virtually unexplored by treaty monitoring mechanisms to date.[24] Safe conditions of confinement, in particular for those older people in need of special support, demands entirely different considerations, such as extra clothing in the winter, mobility arrangements within facilities and cells, special protection against violence and extortion within prison structure, and age-appropriate educational and vocational opportunities. Imprisoning older persons may require greater financial expense because of the specific needs related, for example, to cognitive limitations associated with conditions like dementia and chronic, disabling and terminal illnesses. Prison officials are struggling to meet these challenges, often due to a lack of resources, inadequate planning and lack of adequate training of staff.

61. Other issues ripe for consideration are whether the continued incarceration of older persons is a disproportionately severe punishment and whether humanitarian considerations should apply to prisoners at a certain age. Considering the purposes of punishment – retribution, incapacitation, deterrence, and rehabilitation – there may be little justification for many older persons' continued incarceration in the prison system in certain instances. Instead, alternative forms of punishment may be preferable based on the financial, practical, and human rights considerations involved.

62. Beyond the prison system, access to justice more broadly requires an enhanced awareness by older persons of their legal rights, legal aid and an increased availability of effective remedies. Older persons often fear to report violations or abuses because of their dependency on the abuser, concern for repercussions, anxiety over a lack of support or lack of familiarity with reliable mechanisms. Ensuring the political participation of older persons is necessary to guarantee that States develop age-sensitive laws and policies to implement and mainstream access to the required protections.

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[23] See World Health Organization and the World Bank, (Malta, 2011).

[24] See Human Rights Watch, *Old Behind Bars: The Aging Prison Population in the United States* (2012).

V. Conclusions and recommendations

63. **The dedicated attention granted to the situation and challenges of older persons at the international level due to the establishment of the Open-ended Working Group on Ageing is welcomed. As mandated by the General Assembly in its resolution 65/182, the Working Group task is broad and offers a critical opportunity to explore gaps in the international framework as well as to shed light on further instruments or measures to address them.**

64. **The situation of older persons presents a number of particular and urgent human rights challenges. As this report argues, these challenges relate equally to civil, cultural, economic, political and social rights. Age discrimination, long-term care, violence and abuse, social protection, adequate food and housing, decent work, access to productive resources, legal capacity, health and end-of-life support are some of the most pressing areas of concern, each exacerbated by normative and operational gaps in protection, and each posing a set of issues that deserves in-depth analysis and regulation.**

65. **Older persons represent a large and growing segment of the population and their presence is a major shift in the social fabric across all regions of the world. As right-holders confronting age-specific human rights challenges, older persons can no longer be ignored.**

66. **Current arrangements at the national and international level to protect the human rights of older persons are inadequate. Dedicated measures to strengthen the international protection regime for older persons are called for without further delay. Member States should explore various measures, including a new dedicated international instrument, a new special procedure mandate under the auspices of the Human Rights Council, and mainstreaming the human rights of older persons throughout existing mechanisms, policies and programmes.**

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Corrigendum

The corner notation on document E/2012/51 should read as above.

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